



## VIRGINIA REAL ESTATE BOARD

# VREB *SPEAKING*

[www.dpor.virginia.gov](http://www.dpor.virginia.gov)

Summer 2007

### Message From the Chair



R. Schaefer Oglesby

As I write this column for VREB Speaking, I try to identify current problems that present to the Board and also discuss national trends from ARELLO.

Nationally, the largest problem and the one getting the most publicity these days is mortgage fraud. When real estate agents are involved with this, it typically presents as contracts written for a sales price higher than the seller was expecting. The contract usually calls for the seller to take back a 2<sup>nd</sup> deed of trust. At closing, the seller receives his proceeds and a 2<sup>nd</sup> deed of trust which is "forgiven". There are a variety of different approaches, but they involve inducing the lender to lend beyond the normal accepted debt/value ratio, placing the lender in jeopardy of default and loss. If you see this occurring, report it to the VREB.

It has been brought to my attention that the Virginia Residential

Landlord Tenant Act requires that you keep records of Security Deposits for two years. Remember, the VREB regulations require that you maintain those records for three years. Don't get caught short.

Do you sell real estate with a single wide or doublewide mobile home on it? You could find yourself in violation of the Manufactured Home Brokers licensing regulations if you sell more than two mobile homes with titles in any calendar year. Always ask the seller if the dwelling has a title (looks like a car title).

There are several tests to see if the mobile home has become part of the real estate. Has the title been turned into the DMV? Is the building on a permanent foundation with axels and wheels removed? Does it look like the owner intended for it to be permanently located there? Does the city or county assessor's office consider it as real estate? Feel free to contact me if you have any questions about items in this column.

Until next time,

Schaefer



Virginia Real Estate Board  
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804/367-8500

Timothy M. Kaine  
Governor

Patrick O. Gottschalk  
Secretary  
*Commerce & Trade*

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### 2007 Meeting Dates

All meetings are held on the 4th Floor of DPOR, at the address above.

May 10, 2007  
July 19, 2007  
September 20, 2007  
November 8, 2007

## BOARD MEMBERS

R. Schaefer Oglesby, Chair  
Lynchburg

Byrl P. Taylor, Vice-Chair  
White Stone

Florence Daniels  
Alexandria

Nathaniel Brown  
Charlottesville

Judith Childress  
Martinsville

Marjorie Clark  
Richmond

Carol Clarke  
Charlottesville

Miles Leon  
Norfolk

Scott Gaeser  
Manakin Sabot

## DPOR Staff

Jay DeBoer, Director

David Ashe, Chief Deputy

Karen O'Neal, Deputy Director,  
Licensing & Regulation Division

Nick Christner, Deputy Director,  
Compliance & Investigation Division

Steven Arthur, Deputy Director  
Administration & Finance

Lizbeth Hayes, Director  
Fair Housing Office

## Real Estate Board Staff

Christine Martine  
Executive Director

Chris Olson  
Administrative Assistant  
804/367-8552

Education Administrator  
804/367-2406

Tom Perry  
Property Registration Administrator  
804/367-8510

Maryanne Woo  
Office Manager  
804/367-8526



## **WE'RE MOVING!!**

In August, the Department of Professional & Occupational Regulation will be re-locating approximately 12 miles from our current location. We will be located in the Deep Run Office Complex on Gaskins Road, in Henrico County. In addition to a new address, we will have new telephone numbers. Stay tuned for additional info!

## Legislative Changes to Condominium Resale Certificates and Property Owners Association Disclosure Packets

The 2007 Session of the General Assembly passed a number of bills that impact those involved with Common Interest Communities (CIC). Governor Tim Kaine has approved legislative changes, effective July 1, 2007, that have significant changes to the way resale certificates (for condominium units) and disclosure packets (lots in property owner associations) are requested and the fees that are allowed.

The Condominium Act and the Property Owners' Association (POA) Act will have similar changes that require the association to pay a **managing agent** to prepare a resale certificate/disclosure packet upon request from the unit/lot owner or authorized agent and assess the fee to the requesting owner. The fee is not the responsibility of the purchaser. The **managing agent** is allowed to collect a reasonable fee not to exceed \$325 (the maximum allowable amount of such fee shall adjust annually based on the annual increases in the CPI-U) to prepare the resale certificate/disclosure packet on the following conditions: (i) reflects the actual cost, (ii) is established in the contract between the unit owners' association and any managing agent, and (iii) is disclosed on the association's website or the website of its managing agent.

Property owners' associations and condominium associations that do not have a managing agent or have not met the above stated requirements must receive the written request before beginning the preparation and delivery of the resale certificate/disclosure packet. The actual cost, not to exceed \$100, does not need to be received with the written request. The preparation fee for property owner association disclosure packets must be received with the written request.

Associations may also send the resale certificate/disclosure packet by electronic means **unless** either the seller or the purchaser requests a paper resale certificate/disclosure packet.

The notification of cancellation was also amended for the Condominium and Property Owners' Association Acts. As of July 1, 2007, the unit/lot owner or their agent may receive the request to cancel the purchase contract by (i) hand delivery; (ii) United States mail, postage prepaid and the sender retain proof of mailing; (iii) electronic means where the sender retains sufficient proof of the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. The sender shall have the burden to demonstrate delivery of the cancellation notice.

The association or the association's managing agent must still provide the resale certificate/disclosure packet to the seller/agent within 14 days of the request and may charge, with the mutual agreement of the seller, a rush fee not to exceed \$25, the actual cost of any mailing or delivery, and any actual cost incurred at the request and consent of the purchaser.

Additionally, a "statement of the balance due of any outstanding loans of the association" has been added to both the resale certificate and disclosure packet. This amendment will result in the Disclosure Packet Notice form, created by the Real Estate Board pursuant Section 54.1-2105.1 of the Code of Virginia, to be revised. The form will be available July 1, 2007 at [http://dpor.virginia.gov/dporweb/cic\\_form.cfm](http://dpor.virginia.gov/dporweb/cic_form.cfm).

The Community Association Office will modify the initial registration application and registration renewal forms to begin gathering website information. Beginning July 1, 2007, the "License Look up" link from the agency's webpage at [www.dpor.virginia.gov](http://www.dpor.virginia.gov) will contain submitted website addresses.

If you have any questions regarding changes to the Condominium Act or the Property Owners' Association Act, please contact the Community Association Liaison at 804-367-2941.

## DISCIPLINARY ACTIONS

The Real Estate Board licenses and/or certifies real estate salespersons, brokers, firms, proprietary schools and prelicense instructors. If a complaint is filed against an individual or business that is subject to the laws and regulations of the Board, the complaint is reviewed to determine if a violation may have occurred and if so, an investigation is initiated. Subsequent to the investigation, the regulant is noticed to appear at an informal fact-finding conference approximately 30 days from the date of the notice; or he may be offered a prehearing consent order. A consent order is an agreement entered by the regulant and the Board, stipulating to violations of specific regulations and/or laws and a sanction. After the informal fact-finding conference is held, a recommendation will be submitted to the Board, for consideration at its next regularly scheduled meeting. Until a determination is made by the Board, the regulant can continue to practice. The Board can take the following actions: assess a monetary penalty; suspend or revoke a license; place an individual on probation; deny renewal; approve or deny a licensure application; or withdraw the approval of any school or instructor. All monetary penalties go to the State Literary Fund.

The public is now able to view copies of the Board's final orders and consent orders on its website [www.dpor.virginia.gov](http://www.dpor.virginia.gov). Click on License Lookup. A gray box will appear at the top of the screen with four links. Click on Search Disciplinary Actions Occurring since 4/1/2002. A search page will appear, with directions on how to search. By entering Real Estate Board in the search box, you will get a list of all cases currently in the database.

The following cases are disciplinary actions rendered by the Board in March 2007:

| <u>Case No.</u> | <u>Licensee</u>     | <u>Violation</u>  |
|-----------------|---------------------|---|
| 2006-04847      | Alfredo J. Nunez    | 18 VAC 135-20-180 Maintenance/management of escrow account<br>Fined \$400 plus \$150 Board costs  |
| 2007-01690      | Augusto Arostegui   | 18 VAC 135-20-180 Maintenance/management of escrow account<br>Fined \$750 plus \$150 Board costs  |
| 2007-00153      | James E. Patterson  | 54.1-2132 Licensees engaged by buyers<br>Fined \$500 plus \$150 Board costs   |
| 2007-00237      | Russell G. Bell     | 18 VAC 135-20-260 Unworthiness and incompetence<br>License revoked plus \$150 Board costs   |
| 2007-00547      | Frank D. Oddo       | 18 VAC 135-20-260 Unworthiness and incompetence<br>Quarterly reporting plus \$150 Board costs   |
| 2007-00077      | John D. Burks       | 54.1-2131 Licensees engaged by sellers<br>Fined \$200 plus \$150 Board costs  |
| 2006-01349      | Fiaz Anwar          | 18 VAC 135-20-260 Unworthiness and incompetence<br>18 VAC 135-20-185 Maintenance/management of financial records<br>18 VAC 135-20-310 Delivery of instruments<br>18 VAC 135-20-210 Disclosure of interest<br>18 VAC 135-20-170 Maintenance of license<br>Fined \$13,000 and license revoked |
| 2006-05283      | Ranchie B. Gonzales | 18 VAC 135-20-180 Maintenance/management of escrow account<br>Fined \$500 and placed on probation   |

|            |                   |  |
|------------|-------------------|--|
| 2006-00811 | Linda Baldwin     | 18 VAC 135-20-310 Delivery of instruments<br>18 VAC 135-20-240 Provision of records to the Board<br>18 VAC 135-20-260 Unworthiness and incompetence<br>54.1-2139 Disclosed dual or designated representation authorized<br>Fined \$750 |
| 2006-05502 | Hilda M. Rochford | 18 VAC 135-20-260 Unworthiness and incompetence<br>Fined \$700 and \$150 Board costs; probation  |

## FAIR HOUSING

Pursuant to the Freedom of Information Act (FOIA) policy of the Department of Professional and Occupational Regulation, for Fair Housing case files, only complaint dismissals resulting from the Board's determination that **no reasonable cause exists** to believe that a discriminatory housing practice occurred, shall be disclosed to the public. Upon request and following completion of the Board's investigation, information derived from an investigation and any final investigative report may be made available to only the aggrieved person(s) and the respondent(s). Written conciliation agreements shall be made public **unless** the complainant and the respondent agree in writing that the agreement is to remain confidential and the Board determines that disclosure is not required to further the purposes of the Fair Housing Law. Case names can be obtained from the Board minutes located on the Townhall website.

The Board made a finding of reasonable cause or approved conciliation agreements, for the following cases in March 2007:

| <u>Action</u>          | <u>Case No.</u> | <u>Case Name</u>   |
|------------------------|-----------------|--|
| Conciliation Agreement | 2006-03631      | Pamela Maxwell & Robert Williams v. Bisger Realty Management, Inc., Fred Bisger and Joel Roberts       |
| Conciliation Agreement | 2007-02881      | Samuel Sellers v. Hercules Real Estate, Katrina Scanlan (Cindy Scanlon) and Krit Carter (Chris Carter) |





## Real Estate Customer Service Initiative

The Department of Professional and Occupational Regulation launched its Real Estate Customer Service Initiative in February 2007 to assess and improve satisfaction among its licensees and local REALTOR® associations.

Karen O'Neal, Deputy Director for Licensing and Regulation, mailed letters soliciting open-ended comment the week of February 12th to all real estate firms (approximately 8,000), schools (approximately 60) and local REALTOR® associations (27).



Respondents indicated a strong sense of overall satisfaction with Real Estate Board staff and services. Of the 191 comments received from firms, 14 indicated dissatisfaction. Only two schools responded, aside from those local REALTOR® associations also acting as education providers. Of the 17 local REALTOR® associations responding, comments primarily addressed post license education issues and noted resolution of past problems and satisfaction among their members regarding DPOR customer service.

## Friendly Reminders and Helpful Hints

- ◆ Report all felony convictions to the Board
- ◆ Report all misdemeanor convictions to the Board involving moral turpitude (lying, cheating or stealing), sexual offense, drug distribution or physical injury
- ◆ Notify the Board of a change in your address
- ◆ When completing a transfer license application, make sure you indicate the firm where you are going to work and have the application signed by the broker or other designated person with signature authority.
- ◆ When taking educational courses, provide your legal name and license number. Do not provide your busi-

ness name or nickname; this causes delays in posting the credit hours to your record.

- ◆ Education is reflected on the website 24 hours after being posted in the Board office. When your license is renewed, the hours on the website revert back to zero.

- ◆ Education requirements are posted on the web in several places. It is on the Real Estate Board homepage under Education Requirements and in the Spring 2005 VREB Speaking. You can also utilize the License Lookup feature. Enter a license number, then click on View Education Hours and the requirements are on the left side of the page.



# Real Estate Advertising

## By Carol Clarke, Board Member

In the twenty-first century, real estate advertising now takes many forms...from traditional print media to the Internet, chat rooms and blogs. It is important to remember that disclosure of your status as a real estate agent is important in all forms of advertising.

For online advertising, disclosure means (1) the advertising contains the firm's name, city, state of firm's main office or (2) the advertisement contains the licensee's name, the name of the firm with which the licensee is active and the city and state in which the licensee's office is located.

In all instances -- including classified ads -- the firm's name must be provided.

For a web site, either the firm or the licensee must include disclosure of their status as a real estate licensee in a prominent place, or have an easily identified link to such a disclosure if the firm or licensee owns the webpage or controls its content.

For emails, blogs, and bulletin boards, disclosure should be provided at the beginning or the

end of the email.

An acceptable email signature would look like this:

Jane Doe, GRI, licensed salesperson in the Commonwealth of Virginia  
Happy Daze Realty  
1500 Sunshine Circle  
Richmond Va 23225  
804-999-9999 Office  
804-222-2222 Cell



When participating in or hosting a blog or chat for real estate business purposes, be sure to disclose your status as a licensee and the name of your firm PRIOR to offering to provide licensable services or disclose in text visible on the same webpage that contains

the chat session or blog, especially if the licensee controls the web site hosting.

Keep in mind that we need to inform the public of our licensee status when we share real estate related information or whenever we are sharing our expertise, even online.

### Did You Know?

Instructors licensed to teach pre-licensing courses can be accessed from the website on the License Lookup feature. Enter the instructor's name and check the Real Estate Individual box. For a list of instructors in a particular area, enter the zip code.

Instructors licensed by the Fair Housing Board can be accessed from that section.



# Can a Salesperson Manage a Firm?

By Florence Daniels, Board Member

From time to time we receive inquiries from licensees complaining that a salesperson is acting in a capacity inconsistent with VREB regulations, i.e. managing the brokerage activities of a firm. Below are some clarifications that may help licensees better understand the regulations.

## **Each place of business and every branch office has to be supervised by a broker.**

The VREB regulations are very clear with regard to supervision of real estate offices and places of business. In every such location and instance only a licensee possessing a broker's (or associate broker's) license may supervise the real estate business of the firm. One or more salespersons may work together as a team or in a mentoring arrangement, but a principal or managing broker must supervise all. There is no exception to this rule.

## **Business Entities and Supervision**

One or more licensees (salespersons and associate brokers) may form and apply for a business entity license. While the members of the business entity may establish their own practices and procedures within the entity, all licensees of the entity are still subject to the supervision of the principal broker of the firm, company or real estate brokerage. There is no exception to this rule. While many such entities seek to and in some cases improperly advertise the entity as an "independent" team, these teams are in reality, mini (or maxi) businesses within the parent firm under which the entity license has been granted by the VREB. Like individual licensees, business entities are always subject to the principal or managing broker's supervision

## **Associate Brokers and Salespersons Licensees**

A salesperson and an associate broker (together) may form a corporation to obtain a real estate firm license. However, ALL officers of the corporation MUST have a broker license if the business entity is a real estate firm. A real estate firm formed as a partnership or LLC must have all owners as brokers or associate brokers. The logic in this restriction is that only a licensee holding a broker or associate broker's license may supervise the brokerage activities of a firm. A corporation has stockholders and because of that form of ownership where the owners of the stock are not selling real estate, it is not necessary to have a license at all.

In closing, in order to manage the brokerage activities of a firm, the licensee must have a broker's license or be the associate broker designated by the principal broker of the firm. A salesperson cannot manage the activities of a firm. A salesperson could perform some leadership duties with a job description under the direct supervision of a broker. For example, a salesperson could run sales meetings, serve as a team leader or lead tours for the firm. A salesperson CANNOT review contracts, listings and advise others on brokerage activities.





## Reciprocity Agreements

Effective January 30, 2007, the Oklahoma Real Estate Commission and the Virginia Real Estate Board entered into a reciprocal agreement.

This agreement states that any applicant who holds either a Virginia Salesperson license or an Oklahoma Salesperson license will be allowed to obtain a comparable license in the other jurisdiction upon filing the proper application form and payment of the required fees, provided the applicant furnishes proof of current active licensure in the respective jurisdiction on the date of application. Furnishing such proof will be recognized by the reciprocal jurisdiction as satisfying the applicant's examination and pre-license educational requirements in that jurisdiction. (Certification of Licensure from all States that you had or currently have a license, including Oklahoma, is required.)

Any applicant who holds either a Virginia Broker license or an Oklahoma Broker license will be allowed to obtain a comparable license in the other jurisdiction upon filing the proper application form and pay-

ment of the required fees, provided the applicant furnishes proof of current active licensure in the resident jurisdiction and verification of meeting the reciprocal jurisdiction's experience requirement on the date of application. Furnishing such proof will be recognized by the nonresident jurisdiction as satisfying the applicant's examination, experience and pre-license educational requirements in that jurisdiction. (Certificate of Licensure from all states including Oklahoma or Virginia **AND** Experience Verification forms which are included in the Virginia Broker application package, are required.)

All applicants coming in by reciprocity from any state including Oklahoma, must pass the Virginia state portion of the licensing exam prior to renewing their license. (See Real Estate Board regulation 18 VAC 135-20-105.)





**COMMONWEALTH OF VIRGINIA**  
***Department of Professional and  
Occupational Regulation***  
***3600 West Broad Street***  
***Richmond, Virginia 23230-4917***

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